IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12337 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSOTTAM @ RAKESH HIRALAL MARWADI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12337 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 20/05/2003

ORAL JUDGEMENT

1. The petitioner - detenu, by filing this petition, has challenged the order of detention passed by the Commissioner of Police, Ahmedabad City dated 07.11.2002 detaining the petitioner - detenu under the provisions of Sub-Section (2) of Section 3 of the Gujarat Prevention of

Anti-Social Activities Act, 1985 (hereinafter be referred to as the "PASA Act") on several grounds.

2. I have heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.A.Y.Kogje, learned AGP for the respondents, at length. Mr.H.R.Prajapati, learned advocate for the petitioner, while arguing the matter, has taken me through the order of detention passed by the detaining authority and the grounds of detention dated 07.11.2002 and the material relied upon by the detaining authority, while passing the order of detention under the PASA Act. It is the contention of Mr.H.R.Prajapati that the order of detention deserves to be set aside on several grounds raised in the petition and one of the ground is that the order of detention was passed by the detaining authority, without application of mind. As found from the grounds of detention, the detaining authority, while considering the material placed before him, has recorded satisfaction that the petitioner detenu is acting prejudicial activity to the maintenance of the public order and with a view to prevent him from acting in any manner. The detaining authority has passed the order detaining the petitioner detenu as a "bootlegger" as defined under the provisions of Section 2(b) of the PASA Act. The detaining authority has also passed the committal order on the very day and the petitioner detenu was ordered to be kept in District Jail Rajkot.

3. As found from the grounds of detention, the petitioner detenu was involved in two prohibition cases, which were registered at Prohibition Station on 17.07.2002 and 29.10.2002 for the offences punishable under the provisions of Prohibition Act. In both the cases, the petitioner has committed the offences punishable under Sections 66(1)(b), 65(a)(e), 81, 83 and 116(1)(b) of the Prohibition Act, which was registered vide C.R.No.2292/2002 on 17.07.2002 and in that case, the petitioner was arrested by the police on 02.11.2002. The another prohibition case, the petitioner has committed the offences punishable under Sections 66(b), 65(e) and 81 of the Prohibition Act, which was registered vide C.R.No.2511/2002 and in that case, the petitioner was also arrested by the police on 03.11.2002. It is the case of the petitioner that the petitioner has not moved any bail application. The grounds of detention shows that in the above two prohibition cases, there are other co-accused were involved namely Pramod @ Pappu, Ravindrasing and Dharmendrasinh. The detaining authority has also, on the same material, passed the order of detention against the co-accused under the provisions of PASA Act. The detaining authority has recorded

satisfaction that on considering the material placed before him, he was satisfied that the petitioner detenu is acting prejudicial activities to the maintenance of the public order and the material shows that the petitioner is a "bootlegger". The grounds of detention also reflects that the petitioner - detenu was in judicial custody in respect of two prohibition cases registered against him and the detaining authority was of the view that the detenu can move the Court, at any time, praying for bail and he may release on bail after furnishing security and the accused is continued such prejudicial activity again and accordingly with a view to prevent such prejudicial activity to the maintenance of the public order. It was necessary to pass the order of detention against the petitioner, detaining him under the PASA Act.

4. In the petition, the petitioner has challenged the order of detention on several grounds. Mr.H.R.Prajapati, while arguing the matter, has placed reliance upon only one ground, while challenging the order of detention in the petition, in respect of ground No.(o). According to the petitioner that the petitioner was in judicial custody in connection with the offences registered against him and there was no cogent material with the detaining authority to arrive at the subjective satisfaction that the petitioner is likely to be released on bail in near future and is likely to continue his prejudicial activities, which is maintenance of the public order and the subjective satisfaction is without any material and the same gets vitiated. In support of his submission, Mr.H.R.Prajapati, learned advocate for the petitioner has relied upon the decision of this Court rendered by my learned brother Mr.Justice P.B.Majmudar, while deciding Special Civil Application No.7423 of 2002 dated 04.03.2002 (Ravindrasing @ Ravi Jayramsing Pawar (Rajput) Vs. The Commissioner of Police). In the said case, the Court has also considered the decision of the Hon'ble Apex Court in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 S.C. 3675. The said Ravindrasing was co-accused in the prohibition case registered against the present petitioner. Dealing with the contention in the said petition, the order of detention passed by the detaining authority dated 31.07.2002 against the said Ravindrasing was set aside and the said detenu was set free. In the said case also, there was no material with the detaining authority, that any bail application moved by the accused in the Court at the relevant time and there is no cogent material with the detaining authority that whether any bail application

either move or pending and relying upon the decision of the Hon'ble Apex Court, the order of detention was set aside.

5. Mr.A.Y.Kogje, learned AGP for the respondents has supported with the order of detention and he has taken me through the affidavit-in-reply of Shri K. R. Kaushik, Commissioner of Police filed in the present case. As found from the reply affidavit, in reply to para-4(o), the detaining authority has averred that both the cases registered against the detenu at the time of passing the order of detention "he was in judicial custody". Both the offences registered under the Prohibition Act and, therefore, on his making necessary application for his release on bail, there are very chances of his releasing on bail and on such release, he will indulge the anti-social activities. In light of the contentions raised before and reply affidavit filed by Mr.Kaushik on the relevant contentions, this Court is of the view that at the time of passing the order of detention, the detenu was in judicial custody in respect of the prohibition case registered against him, the co-accused Ravindrasing was also detained under the provisions of PASA Act and the order of detention passed against the said Ravindrasing, was set aside by relying upon the decision of the Hon'ble Apex Court. There is no cogent material, at the time of passing the order of detention with the detaining authority to show that the petitioner has filed an application for bail before the Competent Court for which the Court is required to be examined the bail application filed by the accused and the order of detention passed by the detaining authority on the same material against the Ravindrasing was held to be illegal and the said order of detention is set aside. This Court is of the view that the contention raised by Mr.H.R.Prajapati is well founded and on the same ground, the order of detention deserves to be set aside. Accordingly, the petition is allowed. The impugned order dated 07.11.2002 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. The detenu Shri Parsottam @ Rakesh Hiralal Marwadi is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[D.K.Trivedi,J.]

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